

120 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

DTE East China, L.L.C.

Docket No. ER06-348-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 31, 2007)

1. On July 27, 2006, DTE East China, L.L.C., (East China) filed a settlement agreement in the above-referenced docket. On July 31, 2006, Commission Trial Staff filed comments recommending that the settlement agreement be certified by the presiding judge. No other comments were received. On August 29, 2006, the settlement judge certified the settlement to the Commission as uncontested.¹

2. The subject settlement states that it resolves all of the issues set for hearing and settlement judge procedures in Docket No. ER06-348-000 related to the provision of Reactive Supply and Voltage Support from Generation Service (Reactive Power) to the Midwest Independent Transmission System Operator, Inc., from East China's electric generating facility located in East China Township, Michigan.² The settlement appears to be fair and reasonable and in the public interest and is hereby approved and the revised East China FERC Electric Tariff No. 3 is accepted for filing effective December 21, 2005. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. In addition, the applicable standard of review for any changes to the settlement agreement, whether proposed by a party, a non-party, or the Commission, acting *sua sponte*, is the *Mobile-Sierra* public interest standard of review.³

¹ *DTE East China, L.L.C.*, 116 FERC ¶ 63,047 (2006).

² *DTE East China, L.L.C.*, 114 FERC ¶ 61,138 (2006).

³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 345 (1956) (*Mobile*); *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348, 355 (1956) (*Sierra*). As a general matter, parties may bind the Commission to the public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir 2006). In this case we find that the public interest standard should apply.

3. The rate schedule designations submitted as part of the settlement are in compliance with Order No. 614, and are accepted for filing and made effective as set forth in the settlement.⁴

4. This order terminates Docket No. ER06-348-000.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴ See Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18,221, FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

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KELLY, Commissioner, *dissenting in part*:

The parties in this proceeding have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future changes to the settlement agreement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I must respectfully dissent in part from this order.

Sudeen G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers any change to the Settlement that may be sought by the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).